

This letter discusses the Telecommunications Excise Tax treatment of telecommunications associated with Internet services. See 86 Ill. Adm. Code Part 495. (This is a GIL).

May 23, 2001

Dear Xxxxx:

This letter is in response to your letter received February 7, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

PERSON suggested we fax questions relating to Illinois taxes to be charged regarding various billing scenarios. We are specifically checking on what, if any, Illinois sales/use/excise taxes should be charged to customers for the following services:

1. Providing internet access through DSL circuits;
2. Providing internet access through T1 circuits;
3. Providing private networks through DSL circuits;
4. Providing web hosting and e-mail services;
5. Equipment leased in connection with above services.

When I posed the question to PERSON, he indicated that if the service was a standard monthly charge, there were no Illinois taxes to be charged. If the charge was on a per-minute basis, Illinois telecommunications excise tax was to be charged. When asked for a citation that I could refer to, he suggested we fax the questions to the Legal Department for answers as well as citations.

PERSON indicated that there is same day response time to fax inquiries. If this is not the case, please let us know when we may expect your response.

TELECOMMUNICATIONS TAXES

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. 35 ILCS 630/3. This tax must be collected from persons by "retailers maintaining a place of business in Illinois." 35 ILCS 630/5. "Gross charges" means the amount paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by a retailer, valued in money whether paid in money or otherwise, including cash, credits, services

and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of materials used, labor or service costs or any other expense whatsoever. However, gross charges do not include charges for customer equipment, including such equipment that is leased or rented by the customer from any source, wherein such charges are disaggregated and separately identified from other charges in the books and records of the retailer. See 86 Ill. Adm. Code 495.100.

“Telecommunications,” in addition to the meaning ordinarily and popularly ascribed to it, includes, without limitation, messages or information transmitted through use of local, toll and wide area telephone service; private line services; channel services; telegraph services; teletypewriter; computer exchange services; cellular mobile telecommunications service; specialized mobile radio; stationary two way radio; paging service; or any other form of mobile and portable one-way or two-way communications; or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber-optics, laser, microwave, radio, satellite or similar facilities. Carrier access charges, right of access charges, charges for use of inter-company facilities, and all telecommunications resold in the subsequent provision of, used as a component of, or integrated into end-to-end telecommunications service shall be non-taxable as sales for resale. 35 ILCS 630/2(c). Telecommunications made through DSL or T1 lines are included.

However, “telecommunications” does not include “charges for the storage of data or information for subsequent retrieval or the processing of data or information intended to change its form or content” or “value added services in which computer processing applications are used to act on the form, content, code and protocol of the information for purposes other than transmission.” See 35 ILCS 630/2(a) and 2(c). If telecommunications retailers provide both such services, the charges for each must be disaggregated and separately stated from telecommunications charges in the books and records of the retailers. If these charges are not thus disaggregated, the entire charge is taxable as a sale of telecommunications.

Generally, persons that provide subscribers access to the Internet and who do not, as part of that service, charge subscribers for the line or other transmission charges that are used to obtain access to the Internet are not considered to be telecommunications retailers from these activities. It is our general understanding that most Internet service providers (ISPs) do not, as part of their billing, charge subscribers for such line charges, but instead, pay all transmission costs to their telecommunications providers. If companies provide telecommunications to such end-users (e.g., to the ISPs described immediately above) and are also “retailers maintaining a place of business in this State,” they are required to collect the tax from such ISPs and remit it to the Department. Consequently, an ISP might pay its telecommunications provider the tax for DSL services it used to provide Internet access. If, however, the ISPs separately charge subscribers for the DSL line or other transmission charges, they should provide their telecommunications providers with Certificates of Resale and should themselves collect and remit tax.

Effective January 1, 1998, the Telecommunications Municipal Infrastructure Maintenance Fee Act (Act), 35 ILCS 635/1 et seq., provides for the imposition of various fees upon telecommunications retailers. Section 15 of the Act imposes a State infrastructure maintenance fee upon telecommunications retailers, as that term is defined in 35 ILCS 635/10, “equal to 0.5% of all gross charges charged by the telecommunications retailer to service addresses in this State for telecommunications, other than wireless telecommunications, originating or received in this State.” 35 ILCS 635/15(b). Section 15 also provides for an optional infrastructure maintenance fee which telecommunications retailer may pay “with respect to the gross charges charged by the telecommunications retailer to service addresses in a particular municipality for telecommunications, other than wireless telecommunications, originating or received in the municipality....” 35 ILCS

635/15(c). These fees are collected, enforced and administered by the Illinois Department of Revenue. 35 ILCS 635/25(b).

Section 20 of the Act provides that municipalities may impose a municipal infrastructure maintenance fee upon telecommunications retailers. This fee is based upon gross charges charged by the telecommunications retailers to service addresses in the municipality for telecommunications originating or received in the municipality. This fee is collected, enforced, and administered by the municipality imposing the fee. 35 ILCS 635/25(c).

Illinois municipalities are also authorized to impose a municipal telecommunications tax. See 65 ILCS 5/8-11-17. The tax is imposed on the act or privilege of originating in such municipality or receiving in such municipality intrastate or interstate telecommunications by a person at a rate not to exceed 5% of the gross charges for such telecommunications purchased at retail by such person. See 65 ILCS 5/8-11-17(a)(1) and 65 ILCS 5/8-11-17(a)(2). This tax may only be imposed if the municipality does not have in effect an occupation tax imposed on persons engaged in the business of transmitting messages by means of electricity as authorized by Section 8-11-2 of the Illinois Municipal Code, 65 ILCS 5/8-11-2. The municipality imposing the tax provides for its administration and enforcement, not the Illinois Department of Revenue. Therefore, questions regarding this tax should be addressed to the individual municipalities imposing it.

In addition, the Emergency Telephone System Act provides that “[t]he corporate authorities of any municipality or any county may, subject to the limitations of subsection (c), (d), and (h), and in addition to any tax levied pursuant to Section 8-11-2 of the Illinois Municipal Code, impose a monthly surcharge on billed subscribers of network connection provided by telecommunications carriers engaged in the business of transmitting messages by means of electricity originating within the corporate limits of the municipality or county imposing the surcharge at a rate per network connection determined in accordance with subsection (c).” See 50 ILCS 750/15.3(a) and (c). “The surcharge authorized by this Section shall be collected from the subscriber by the telecommunications carrier providing the subscriber the network connection as a separately stated item on the subscriber’s bill.” 50 ILCS 750/15.3(f). This surcharge is paid to the municipality, county or Joint Emergency Telephone System Board. See 50 ILCS 750/15.3(g). Questions regarding the surcharge should be addressed to the municipality or county imposing it.

SALES AND USE TAX

The Retailers’ Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. 35 ILCS 120/2. Further, the Retailers’ Occupation Tax is imposed on the gross receipts from the sale of such tangible personal property. If no tangible personal property is transferred, Retailers’ Occupation Tax liability is not incurred.

Please note, however, that Use Tax is owed when a person uses tangible personal property in Illinois. Tangible personal property purchased for use in providing a service, but that is not transferred to a customer is subject to Use Tax. Further, lessors of tangible personal property under true leases in Illinois, are deemed end users of the property to be leased. See 86 Ill. Adm. Code 130.220. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. No tax is imposed on rental receipts by the State of Illinois. Consequently, lessees incur no tax liability.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

MPM:msk
Enc.